



**Response under 37 C.F.R. 1.116
- Expedited Examining Procedure -
Examining Group 2878**

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Customer No. 01333**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Ronald S. Cok

AMBIENT LIGHT DETECTION
CIRCUIT

Serial No. 10/736,340

Filed 15 December 2003

Group Art Unit: 2878

Examiner: Thanh X. Luu

I hereby certify that this correspondence is being deposited today with the United States Postal Service as first class mail in an envelope addressed to Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Valerie J. Richardson
Valerie J. Richardson
Date: *January 16, 2007*

Commissioner for Patents
P.O. Box 1450
Alexandria, VA. 22313-1450

Sir:

Pre-Appeal Brief Request for Review

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested based on the following Arguments

Arguments

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Riedel. Contrary to the Examiner's assertion, however, there is no teaching in Riedel with respect to a circuit which automatically changes the period of an integration signal to an integrating photosensor circuit in response to a determination that the photo signal produced by the photosensor circuit is in one of three distinct states (i.e., a no-signal, in-range, and saturated signal states) so as to result in the photo signal being in the in-range state and producing a corresponding ambient light signal, as required in accordance with the claimed invention. While it is of course possible that a photo signal of Riedel may fall into one of these distinct states, there is simply no teaching of

a control circuit to automatically correct the integration period so as to maintain the signal in an in-range state in response to a determination that the photo signal is one of the other states. Note specifically that a “low” ambient light level as referenced by Riedel does not necessarily imply a no-signal state, and a “high” ambient light level does not necessarily imply a saturated signal state. The Examiner has entirely failed to address this previously presented fact, and the present anticipation rejection accordingly represents clear error on this point alone.

There is further no support for the Examiner’s contention that col. 6, lines 8-10 in combination with col. 5, lines 40-44 of Riedel teaches a control circuit (microprocessor, not shown) for receiving the photo signal and automatically increasing the period of integration period signal when the photo signal is in the no-signal state, and decreasing the period of the integration period signal when the photo signal is in the saturated state so as to result in the photo signal being in the in-range state and producing a corresponding ambient light signal. Riedel teaches the use of a photodetector in a system for determining the amount of ambient light transmitted through a reagent and/or sample fluid on an analyte strip, and suggests at col. 5, lines 31-44 (which includes lines 40-44 referenced by the Examiner) periodic sampling and integration of the output of the photodetector, with an observation that longer integration times may be used for low ambient light levels and shorter integration times may be used for high ambient light levels in the fluid sample analyzer system. As discussed at col. 6, lines 8-21 (which includes lines 8-10 referenced by the Examiner), however, rather than anticipate the claimed invention, this change in integration time is specifically taught only for use in increasing the signal-to-noise ratio of the measured response with respect to the difference between the unhydrated response and the maximum hydrated response in the disclosed sample fluid testing method as illustrated in Fig. 6. There is simply no teaching in Riedel in such cited passages (or elsewhere) with respect to automatically increasing the period of integration period signal when the photo signal is in a no-signal state, and decreasing the period of the integration period signal when the photo signal is in a saturated state so as to result in the photo signal being in the in-range state and producing a corresponding ambient light signal as alleged by the Examiner. Thus, the Examiner’s reliance upon such cited sections for the

contention that Riedel anticipates the present invention accordingly represents clear error.

The Examiner's further contention that "since a microprocessor is used and there is no user intervention, as understood, the system of the prior art 'automatically' performs the claimed function as claimed" also represents clear error. The Examiner has improperly taken the omission of any teaching in Riedel (with respect to how the proposed change in integration time might be performed) as a positive teaching that it must necessarily be "automatically" done in response to a specific signal state. There simply is no basis for such contention. Rather, it might just as well be done based on user instructions. There is in any event no teaching with respect to performing any such change in integration time in response to a detected no-signal or saturated state, as opposed to simply modifying an in-range state photo signal to provide a more desirable signal-to-noise ratio. For all the above reasons, the anticipation rejection represents clear error and should be reconsidered.

Claims 3-11 are rejected under 35 U.S.C, 103(a) as being unpatentable over Riedel. This rejection also represents clear error, to the extent it is based on the erroneous interpretations of the Riedel reference as set forth above. As there is no teaching in Riedel with respect to automatically changing the period of an integration signal to an integrating photosensor circuit in response to no-signal, in-range, and saturated signal states, even if substitution of further features as proposed by the Examiner were to be made in Riedel for the purposes proposed by the Examiner, the present invention still would not be obtained. Further, as Riedel is directed towards a different problem (i.e., increasing signal-to-noise ratio of the measured response with respect to the difference between an unhydrated response and a maximum hydrated response of a fluid) than that of the present invention, a *prima facie* case of obviousness has clearly not been established as to modifying the teachings of Riedel so as to obtain a circuit in accordance with the present invention. Such rejection accordingly represents clear error and should be reconsidered.

Claims 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Japanese publication of Toshiba (JP 2002-297096) in view of

Riedel. This rejection also represents clear error, to the extent it is based on the erroneous interpretations of the Riedel reference as set forth above. As there is no teaching in Riedel with respect to automatically changing the period of an integration signal to an integrating photosensor circuit in response to no-signal, in-range, and saturated signal states, even if the light detector system of Riedel were to be provided in the apparatus of Toshiba as proposed by the Examiner, the present invention display of claim 12 and method of controlling a display of claim 18 still would not be obtained. Further, as Riedel is directed towards a different problem (i.e., increasing signal-to-noise ratio of the measured response with respect to the difference between the unhydrated response and the maximum hydrated response) rather than detecting ambient light level itself as desired in Toshiba and the present invention, a *prima facie* case of obviousness with respect to modifying the teachings of Riedel in the proposed combination of Riedel and Toshiba so as to result in the present claimed invention has clearly not been established. Such rejection accordingly represents clear error and should be reconsidered.

The final rejection thus clearly is in error for at least the reasons asserted above, and a prompt and favorable action in response to this request is earnestly solicited.

Respectfully submitted,



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If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the Examiner is requested to communicate with Eastman Kodak Company Patent Operations at (585) 477-4656.